

or less and does not exceed 108 inches in length and girth combined;

(3) Multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed \$250 per shipment.

(b) Orders issued on VA Form 90-2138, Orders for Supplies or Services, will direct the vendor's attention to shipping instructions on the reverse of the form. When VA Form 90-2138 is not used, the vendor will be instructed as follows:

(1) Consistent with the terms of the contract, pack, mark and prepare shipment in conformance with carrier requirements to protect the personal property and assure assessment of the lowest applicable transportation charge.

(2) Add transportation charges as a separate item on your invoice. The invoice must bear the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Do not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Do not prepay transportation charges on this order if such charges are expected to exceed \$100. Ship collect and annotate the commercial bill of lading, "To be converted to Government Bill of Lading."

(c) Each contracting officer is responsible for:

(1) Making a diligent effort to obtain the most accurate estimate possible of transportation charges; and

(2) Utilizing the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When in accordance with FAR Subpart 28.3 and FAR 47.102 it is determined that a shipment is to be insured or the value declared, the vendor will be specifically instructed to do so on the order, when a written order is used. If the order is an oral order, all copies of the purchase request will be anno-

tated to show that insurance/declared value was specifically requested.

#### **847.304 Determination of delivery terms.**

##### **847.304-1 General.**

When alternative delivery terms are appropriate but the contracting officer elects to use only one in the invitation for bids, or request for proposals, he shall document the contract file to show his reasons for so doing.

#### **847.305-70 Potential destinations known but quantities unknown.**

When the VA Marketing Center contracts for decentralized procured items by all Department of Veterans Affairs installations, the evaluation of bids must follow specific procedures. To place each bid on an equal basis, even though specific quantities required by each hospital cannot be predetermined, an anticipated demand factor will be used in proportion to the number of hospital beds or patient workload. The clause prescribed in 852.247-70 shall be used in these instances.

## **PART 849—TERMINATION OF CONTRACTS**

### **Subpart 849.1—General Principles**

Sec.

849.106 Fraud or other criminal conduct.

849.107 Audit of prime contract settlement proposals and subcontract settlements.

849.111 Review and approval of proposed settlements.

849.111-70 Settlement review boards.

849.111-71 Required review and approval.

849.111-72 Submission of information.

### **Subpart 849.4—Termination for Default**

849.402 Termination of fixed-price contracts for default.

849.402-6 Repurchase against contractor's account.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12628, Mar. 29, 1984, unless otherwise noted.

**Subpart 849.1—General Principles****849.106 Fraud or other criminal conduct.**

When the circumstances set forth in FAR 49.106 are encountered, the contracting officer will immediately discontinue all negotiations. The contracting officer will submit all of the pertinent facts necessary to support his/her reasoning to the Deputy Assistant Secretary for Acquisition and Materiel Management (93), (or the Deputy Assistant Secretary for Facilities (08) in the case of contracting officers from the Office of Facilities). The Deputy Assistant Secretary for Acquisition and Materiel Management (93), or the Office of Facilities will review the submission and fully develop the facts. If the evidence indicates fraud or other criminal conduct, the Deputy Assistant Secretary for Acquisition and Materiel Management will forward the submission with his/her recommendations, through channels (to include the General Counsel, if appropriate), to the Inspector General (51) for referral to the Department of Justice. The contracting officer will be advised by the Deputy Assistant Secretary for Acquisition and Materiel Management or the Office of Facilities as to any further action to be taken. Pending receipt of this advice, the matter will not be discussed with the contractor. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General. If inquiry is made by the contractor, he/she will be advised only that the proposal has been forwarded to higher authority.

**849.107 Audit of prime contract settlement proposals and subcontract settlements.**

Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in FAR 49.107. Contracting officers in the Office of Acquisition and Materiel Management and Office of Facilities who are

located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or to request audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C), to request audits directly from the cognizant agencies. Audit control numbers may be obtained verbally from the Deputy Assistant Secretary for Acquisition and Materiel Management (93D).

[49 FR 12628, Mar. 29, 1984, as amended at 52 FR 42440, Nov. 5, 1987; 54 FR 40065, Sept. 29, 1989]

**849.111 Review and approval of proposed settlements.****849.111-70 Settlement review boards.**

The Deputy Assistant Secretary for Acquisition and Materiel Management and the Deputy Assistant Secretary for Facilities will each establish within his/her own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one board is considered desirable. Each settlement review board should be composed of at least three qualified and disinterested employees. The membership of each board should include at least one lawyer and one accountant.

**849.111-71 Required review and approval.**

Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a settlement review board if:

(a) The amount of settlement, by agreement or determination, involves \$50,000 or more; or

(b) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract, and:

(1) In the case of a complete termination, the fee, as adjusted, is \$50,000 or more; or

(2) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is \$50,000 or more; or

(c) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(d) The contracting officer, in his/her discretion, desires review by the settlement review board.

**849.111-72 Submission of information.**

(a) The contracting officer shall submit to the appropriate settlement review board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal,

(2) The audit report,

(3) The property disposal report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the board in arriving at a decision to approve or disapprove the proposal. The board may, in its discretion, require the submission of additional information.

(b) When a review of a proposed settlement is required and the contract covers supplies, equipment or services, other than construction chargeable to Construction Appropriations, the contracting officer will submit the pro-

posed settlement or determination to the settlement review board through the Deputy Assistant Secretary for Acquisition and Materiel Management.

(c) When the contract covers construction chargeable to Construction Appropriations and review is required, the proposed settlement or determination will be submitted by the contracting officer to the settlement review board through the Deputy Assistant Secretary for Facilities.

**Subpart 849.4—Termination for Default**

**849.402 Termination of fixed-price contracts for default.**

**849.402-6 Repurchase against contractor's account.**

(a) VA Form 90-2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Department of Veterans Affairs. When repurchase results in the payment of excess costs and the purchase is made through the Supply Fund, the excess costs, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well those of the Government.